IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 129/2003
(Bhura Lal Vs. Smt. Prem Devi & Anr.)

Date of Order : 15/09/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Sandeep Mehta, for the petitioner.
Mr. P.N.Mohanani for the non-petitioners.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 20.1.2003 passed by Additional Sessions Judge No.1, Bhilwara (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioner against the order dated 19.8.2002 passed by Judicial Magistrate (East), Bhilwara (for short 'the trial court' hereinafter) was dismissed.

Heard learned counsel for the parties. Carefully gone through the orders passed by the courts below.

On an application filed by non-petitioners, who are wife and son of the present petitioner, under Section 125 Cr.P.C., seeking monthly allowance of maintenance, notice of the

application was served on the petitioner. The petitioner engaged the counsel. During pendency of the case, the petitioner and his counsel failed to appear before the trial court and therefore, ex-parte proceeding was taken against the petitioner. The trial court recorded the statement of non-petitioner and her witnesses and granted monthly allowance of maintenance in favour of non-petitioners @ Rs. 250/- each. An application under sub-section (2) of Section 126 Cr.P.C. was filed by the petitioner seeking setting aside ex-parte order granting monthly allowance of maintenance. That application came to be dismissed by order dated 19.8.2002 by the trial court, against which the petitioner preferred a revision petition. The revisional court by an elaborate and well reasoned order dismissed the revision petition.

It is contended by learned counsel for the petitioner that the counsel for the petitioner recorded the date in his Peshi diary inadvertently other than the date fixed by the trial court and therefore, he failed to appear before the trial court on the date when the matter was posted.

From the record, it appears that an application under Section 125 Cr.P.C. was filed by the non-petitioners on 16.8.1999. On 17.5.2000 the petitioner appeared through his counsel before the trial court and the matter was adjourned at the request of counsel for the petitioner. On 15.11.2000 the application seeking interim maintenance was dismissed and the

matter was posted for reply to the original application on 11.12.2000. Thereafter, the matter was posted to 11.12.2000 and on 9.1.2001 neither the petitioner nor his counsel appeared therefore, ex-parte proceeding was drawn. On 20.2.2001 the non-petitioner produced the witnesses PW-1 Prem, PW-2 Toluram and PW-3 Bhanwarlal. Thereafter, the matter was posted to 21.3.2001, 12.4.2001, 25.4.2001, 26.4.2001, 28.4.2001 and 30.4.2001. On 30.4.2001, the trial court allowed the application filed by the non-petitioners and granted monthly allowance of maintenance @ Rs. 250/- each in favour of non-petitioners and against the petitioner. On 17.7.2001, an application under Section 126 (2) Cr.P.C. seeking setting aside the ex-parte order was filed on behalf of the petitioner. The trial court noticed that not only the date when the petitioner and his counsel failed to appear, thereafter the matter was adjourned on various dates and on subsequent dates also neither the petitioner nor his counsel appeared and therefore, the trial court did not find any sufficient cause for setting aside the ex-parte order. The revisional court, on examination of the record, came to the conclusion that the cause shown by the petitioner for his non-appearance,cannot be said to be sufficient cause. Even on succeeding dates, the matter was adjourned and no one appeared. That shows that the petitioner was not vigilant and accordingly dismissed the application.

On close scrutiny of the material available on record, in my view, both the courts below were justified in dismissing the application filed by the petitioner seeking setting aside ex-parte order. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of the Court warranting interference in the inherent jurisdiction.

Learned counsel submits that the non-petitioner No.2 by now has already become major. Be that as it may, the monthly allowance granted in favour of non-petitioner No.2 is till he attains the majority.

The criminal misc. petition has no force and it is, therefore, dismissed.

(H.R.PANWAR),J.

rp